

*Mr. Ruppert*



**Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Interstate Industrial Mechanical, Inc.

**File:** B-238172

**Date:** February 21, 1990

Bernard J. Heavey Jr., Esq., for the protester.  
Lester Edelman, Esq., Department of the Army, for the agency.  
George Ruppert, Esq., David Ashen, Esq. and  
John M. Melody, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### **DIGEST**

Where protest initially was filed with contracting agency, subsequent protest to General Accounting Office (GAO) which was not filed within 10 working days of actual knowledge of the initial adverse agency action is dismissed as untimely. Earlier receipt by GAO of information copy of letter which was addressed to the contracting agency and did not include a clear indication of a desire for a decision by GAO did not constitute timely protest to GAO.

### **DECISION**

Interstate Industrial Mechanical, Inc., protests its rejection as nonresponsible and the award of a contract to Brand Site Services, Inc., under Army Corps of Engineers invitation for bids No. DACA67-89-B-0073, for the removal and disposal of asbestos materials and reconstruction in various buildings at Fort Lewis, Washington. The Corps found Interstate nonresponsible on the basis that both of the individual sureties on its bid bond were unacceptable.

We dismiss the protest as untimely.

Upon learning that the Corps had determined it nonresponsible, Interstate filed an agency-level protest contesting the nonresponsibility determination. By letter dated November 30, and received by the protester on December 4, the agency denied the agency-level protest. Interstate then appealed the denial of its protest by letter of

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December 11 addressed to the agency division counsel. On December 14, the agency division counsel advised Interstate's attorney that any further protest should be sent to our Office within 10 working days of December 4.

On December 18, our Office received from Interstate an information copy of Interstate's letter dated December 11 and addressed to the Corps division counsel. We then notified Interstate that this copy of the appeal of the denial of its agency-level protest did not constitute a formal protest to our Office. Thereafter, on December 28, we received a formal protest from Interstate requesting a decision by our Office.

Under our Bid Protest Regulations, if a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1989).

Interstate apparently believes it filed a timely protest with our Office concerning the contracting officer's denial of its agency-level protest when it sent us a copy of the December 11 letter addressed to the Corps. While this letter was received in our Office within the 10-day filing period, that letter did not constitute a protest within the meaning of our Regulations, since it was not addressed to our Office and did not include a clear indication that Interstate desired a decision by our Office. See 4 C.F.R. § 21.1(c). We have specifically held that such information copies of letters to the contracting agency do not constitute protests to our Office. Surface Combustion, Inc.-- Request for Recon., B-230112.2, Mar. 3, 1988, 88-1 CPD ¶ 230.

As indicated, it was not until December 28 that we received from Interstate a protest submission indicating Interstate's desire for a decision by our Office. Since this protest was not filed with our Office within 10 working days after receipt of actual notice of the initial adverse agency action (on December 4), it is untimely and will not be considered. Id.; see 4 C.F.R. § 21.2(a)(3).

The protest is dismissed.



Ronald Berger  
Associate General Counsel